

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRUCE BIRCH,

Plaintiff,

v.

WILLIAM GITTERE, *et al.*,

Defendants.

Case No. 3:20-cv-00544-GMN-CLB

ORDER

I. DISCUSSION

On September 23, 2020, Plaintiff, then an inmate in the custody of the Nevada Department of Corrections (“NDOC”), initiated this prisoner civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1-1). The Court takes judicial notice of the suggestion of death on the record that has been filed in another case (3:19-cv-00043-MMD-CLB at ECF No. 150) in which Bruce Birch (#61203) is the plaintiff. The suggestion of death states Bruce Birch passed away on January 8, 2021.

Pursuant to Federal Rule of Civil Procedure 25(a)(1), “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). As such, if there is no motion for substitution filed within ninety (90) days from the date of this order, the Court will dismiss the case.

II. CONCLUSION

For the foregoing reasons, IT IS ORDERED that the Court will dismiss this case in ninety (90) days from the date of this order if there is no motion for substitution filed pursuant to Federal Rule of Civil Procedure 25(a)(1).

1 IT IS FURTHER ORDERED that the application to proceed *in forma pauperis* (ECF
2 No. 1) is denied as moot.

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4 DATED: January 14, 2021

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8 GLORIA M. NAVARRO
9 UNITED STATES DISTRICT JUDGE
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